

Award No. 16882
Docket No. MW-17676

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when Fuel Foreman T. B. Sanderson was compensated at his straight time rate instead of his time and one-half rate for traveling in his own automobile during overtime hours on March 22, 1967. (System file D-4567/B-724)

(2) Fuel Foreman T. B. Sanderson be allowed the difference between what he should have received at his time and one-half rate and what he received at his straight time rate for four and one-half (4½) hours because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant T. B. Sanderson was regularly assigned as Fuel Foreman, with assigned headquarters at Tennessee Yards. His regular assigned hours were from 7:00 A. M. to 11:30 A. M. and from 12:30 P. M. to 4:00 P. M. The claimant's duties included unloading fuel at Tennessee Yard and at Thayer, Missouri.

Approximately ten (10) months prior to March 22, 1967, in compliance with the Carrier's instructions, the claimant began to use his private automobile for transportation between the two aforementioned points, for which he was compensated at the rate of eight (8) cents per mile.

On March 22, 1967, the claimant was instructed to unload four (4) carloads of fuel at Tennessee Yards before proceeding to Thayer, Missouri to unload fuel at that location. The claimant, driving his private automobile, departed from Tennessee Yard at approximately 11:00 A. M. and arrived at Thayer at approximately 3:30 P. M. He completed unloading fuel at Thayer at approximately 5:30 P. M. and then returned to Tennessee Yard, arriving at his headquarters point at 10:00 P. M.

On his time card for March 22, 1967, the claimant requested eight (8) hours (7:00 A. M. to 11:30 A. M.; 12:30 P. M. to 4:00 P. M.) pay at his straight time rate and six (6) hours (4:00 P. M. to 10:00 P. M.) at his time and one-

half rate. The Carrier failed and refused to pay the claimant at his time and one-half rate for the four and one-half hours consumed in returning to Tennessee Yards and paid him therefor at his straight time rate.

Claim was timely and properly presented and handled by the Employee at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimant T. B. Sanderson occupies position of fuel foreman with headquarters at this Carrier's Tennessee Yard in Memphis, Tennessee. His assigned hours are from 7:00 A. M. to 11:30 A. M. and from 12:30 P. M. to 4:00 P. M., five days per week with Saturdays and Sundays as rest days.

The Carrier irregularly and temporarily utilizes the services of Claimant Sanderson at Thayer, Missouri, a point some 160 miles distant from Tennessee Yard.

On March 22, 1967 Mr. Sanderson performed service at Tennessee Yard from 7:00 A. M. to 10:00 A. M. He departed for Thayer, Missouri in his personal automobile at 10:00 A. M., stopped at an intermediate point from 11:30 A. M. to 12:30 P. M. for lunch, and arrived at Thayer at 3:00 P. M. He performed service at Thayer from 3:00 P. M. to 5:30 P. M. He departed Thayer at 5:30 P. M. and arrived Tennessee Yard at 10:00 P. M.

For this service Claimant Sanderson received pay at the normal rate of his position as follows:

8 hours straight time - 7:00 A. M. to 11:30 A. M. and
12:30 P. M. to 4:00 P. M.

1.5 hours overtime - 4:00 P. M. to 5:30 P. M.

4.5 hours straight time - 5:30 P. M. to 10:00 P. M.

In addition, Mr. Sanderson was reimbursed for lunch expense of \$1.30 at Hoxie, Arkansas; \$2.95 for dinner expense at Thayer, Missouri; and \$25.92 for automobile mileage allowance based on 324 miles driven at the rate of 8 cents per mile.

The Organization alleges Claimant Sanderson should have received payment at the overtime rate for the period from 5:30 P. M. to 10:00 P. M., hence this dispute.

OPINION OF BOARD: Fuel Foreman Sanderson was directed by Carrier to drive his own auto from Tennessee Yards to Thayer, Missouri. He is assigned to handle the fuel at both locations. At Thayer, Sanderson unloaded fuel until 5:30 P. M., then drove back to Tennessee Yards arriving at 10:00 P. M. He was paid mileage and paid overtime for his work from 4:00 to 5:30 P. M. (4:00 P. M. being his regular quitting time) and straight time from 5:30 to 10:00 P. M., his driving time.

The Organization claims a violation of Rules 7 and Rule 30, Article 5, of the Agreement contending Sanderson was entitled to the 4½ hours he spent traveling at the overtime rate.

The Carrier denies a violation, contending Rule 31 of the Agreement applies.

The Board finds that from the evidence submitted on the property, Rule 7 does not apply because of the Exception Clause therein. If Rule 30 applies, as contended by the Organization, then Claimant was properly paid for the 1½ hours actually worked on overtime and properly paid at straight time for his time spent traveling. Rule 30 excludes time traveling or waiting from overtime rates when employees are permanently assigned to duties requiring variable hours working on or traveling over an assigned territory.

The Board, in light of the evidence submitted, finds that the Agreement was not violated and the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1969.